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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,700	10/14/2003	William Hubbs	29488/39575	3412
4743	7590	07/21/2004	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			GEHMAN, BRYON P	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/684,700

**Applicant(s)**

HUBBS ET AL.

**Examiner**

Bryon P. Gehman

**Art Unit**

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/26/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5, 11, 16 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 3-4 of each of claims 5 and 11, "said front" lacks antecedent basis and should be --said front wall--. In line 2 of each of claims 16 and 22, "said cartons inserts" is inconsistent and ungrammatical.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-14, 16-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edgerton Jr. et al. (5,372,299) in view of King (3,258,114). Claims 1-15 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill (5,505,371) in view of King. Edgerton Jr. et al. and O'Neill each disclose a product display and support carton comprising a display box (10; 5; respectively) forming a product carrying enclosure having an open top and an opposed pair of dividers (18a-b, 20a-b; upper portions of 11, 12), which together define a carton insert, to define at least two separate product receiving compartments. King discloses a display and support

carton inclined at an angle to the vertical when its bottom panel is on a horizontal surface see Figure 6). To modify either one of Edgerton Jr. et al. and O'Neill employing the inclining teaching of King would have been obvious in order to dispose the contents at an inclined angle to facilitate viewing the contents.

As to claims 7-8, 13 and 19, the pair of dividers is integrally associated with each of the side walls, each divider corresponds to a divider on the other side wall.

As to claims 3, 9 and 17, Edgerton Jr. et al. and O'Neill each disclose the front wall as a product restraining rail less in height than the intended contents.

As to claims 4, 10 and 17, Edgerton Jr. et al. and O'Neill each disclose the rear wall as a product support panel at least the height of products to be displayed.

As to claims 2, 5 and 11, ID further discloses walls as defined.

As to claims 6, 12 and 18, Edgerton Jr. et al. and O'Neill each suggest the dividers be parallel to the front and rear walls.

As to claims 14 and 20, Edgerton Jr. et al. and O'Neill each show the carton inserts are generally U-shaped (from side wall to side wall in Edgerton et al., between adjacent compartments in O'Neill).

As to claims 15 and 21, O'Neill shows an L-shape defined by a leg against the side wall and another leg perpendicular to the side wall.

As to claims 16 and 22, Edgerton et al. disclose employing tape (column 3, line 63 through column 4, line 7) to secure the dividers. For the tape to be double sided would have been obvious in order to secure opposing surfaces to one another, as double-sided tape is conventionally employed.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill and the other art as applied to claim 17 above, and further in view of Ockey (3,955,671). O'Neill discloses corrugated material (column 2, lines 41-48) to comprise a display carton. Ockey discloses printed indicia (Figures 2, 3 and 8) contained on the carton. To modify the teaching of O'Neill employing printed indicia would have been obvious in order to provide information about the contents.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are assorted display cartons. Whittemore et al. show a gift bag.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (703) 605-1174. The examiner can normally be reached on Monday through Wednesday from 5:30am to 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with the first name "Bryon" being more prominent than the last name "Gehman".

Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG